

Renewable Energy Access Act

An ACT allowing the State of Michigan to regulate municipality **zoning** approval of distributed wind energy system installation.

Be It Enacted by the Senate and General Assembly of the State of Michigan

1. Purpose:

It is the purpose of this ACT to promote the safe, effective and efficient use of distributed wind energy systems installed to a) give individuals the right to produce their own clean renewable Energy in their home or small business b); reduce stress on already aging power lines and c); reduce roadblocks that go against the State's Renewable Energy Mandate of XX% clean energy by XX. The State of Michigan finds that wind energy is an abundant, renewable, and nonpolluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of these sources. Distributed wind energy systems also enhance the reliability and power quality of the power grid, reduce peak power demands, help diversify the State's energy portfolio, and make the electricity supply market more competitive by promoting customer choice.

The State of Michigan has enacted a number of programs to encourage the use of distributed renewable energy systems including incentives, net metering, property tax exemptions, and easements. However, many existing zoning ordinances within individual cities and counties contain restrictions that prevent citizens of the State from producing their own energy. While in general, Commissions are not intending to discourage the installation of distributed wind turbines, their actions have substantially increased the time and costs required to obtain necessary project permits or created conditions that make the permitting or impossible or the performance of the wind systems impractical.

Therefore, we find that it is necessary to standardize and streamline the proper issuance of zoning and building permits for distributed wind energy systems across the State of Michigan , by passing state-wide ("free-access") zoning legislation, so that this clean, renewable energy resource can be utilized in a cost-effective and timely manner.

2. Proposal:

a. Ordinances adopted by municipalities to regulate the installation and operation of distributed wind energy systems shall not unreasonably limit such installations or unreasonably hinder the performance of such installations. An application for development or appeal involving a distributed wind energy system shall comply with the appropriate notice and hearing provisions otherwise required for the application or appeal pursuant to the "Municipal Land Use Law,"

b. Unreasonable limits or hindrances to performance of a distributed wind energy system shall include the following:

- (1) Prohibiting distributed wind energy systems in all districts within the municipality;
- (2) Restricting tower height or system height through application of a generic ordinance or regulation on height that does not specifically address allowable tower height or system height of a small wind energy system;
- (3) Requiring a setback from property boundaries for a tower that is greater than 100 percent of the system height. In a municipality that does not adopt specific setback requirements for distributed wind energy stems, any distributed wind energy stem shall be set back

from the nearest property boundary a distance of more than 100 percent of the system height; provided, however that this setback requirement may be (modified) reduced by the zoning board of adjustment or, if otherwise appropriate, by the planning board upon application in an individual case if the applicant establishes the conditions for a variance under this act.

- (4) Requiring special fencing around the guy anchor points or setbacks greater than 10' from the property line
- (5) Setting a noise level limit lower than 55 decibels, as measured at the site property line or not allowing for limit overages during short-term events such as utility outages and severe wind storms; and
- (6) Setting electrical or structural design criteria that exceed applicable State, federal, or international building or electrical codes or laws.
- (7) Unless otherwise specified by law, requiring special environmental impact studies.
- (8) Requiring more than standard foundations called out in the International Building Code (IBC).

d. Definitions: For the purpose of this act and section:

“Distributed wind energy system” means a single wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated name plate capacity of not more than 250 kW that is consistent with applicable construction codes, and will be used for either on-site consumption or grid-supply purposes.

“System height” means the height above grade to the top of the wind generator with one of the airfoil rotors pointed vertical.

“Tower height” means the height above grade of the fixed portion of the tower, excluding the wind generator.

“Wind generator” means blades and associated mechanical and electrical conversion components mounted on top of the tower.

3. Within 10 months of enactment of (this act) the Director of Division of Codes and Standards in the Department of Community Affairs, in consultation with the Department of Environmental Protection, shall (promulgate) issue a technical bulletin which shall include model municipal ordinances for the construction of distributed wind energy systems. Prior to (development) issuance of the technical bulletin, the director shall hold one or more public hearings and solicit comments from interested parties. The Division of Codes and Standards in the Department of Community Affairs shall (provide a copy of the technical bulletin to every municipal governing body) post the technical bulletin on its Internet website.

4. Distributed wind energy systems shall be built to comply with all applicable Federal Aviation Administration requirements, including 14 C.F.R. Part 77, subpart B regarding installations close to airports, and all applicable airport zoning regulations.

5. State Environmental Quality Act’s review is not required for the installation of a wind turbine(s) if each turbine’s individual rated capacity is 250 kW or less.

6. Wind Turbine Certification: Distributed wind turbines must have been approved under either the Small Wind Certification Council (SWCC) or other applicable standard recognized in North America.

7. A distributed wind energy system that is out of service for a continuous 12-month period shall be deemed abandoned. The (planning board) municipal zoning enforcement officer may issue a notice of abandonment to the owner of an abandoned distributed wind energy system. The owner shall have the right to respond to the notice of abandonment within 30 days from the receipt date. The (planning board) municipal zoning enforcement officer shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn if the owner provides the (planning board) municipal zoning enforcement officer with information demonstrating the distributed wind energy system has not been abandoned. If the distributed wind energy system is determined to be abandoned, the owner of the distributed wind energy system shall remove the wind generator from the tower at the owner's sole expense within three months of receipt of notice of abandonment. If the owner fails to remove the wind generator from the tower, the (planning board) municipality may pursue a legal action to have the wind generator removed at the owner's expense.

8. When the (building inspector or municipal officer charged with or responsible for the enforcement of building codes) municipal zoning enforcement officer determines that a use or structure proposed in a building permit application will have the potential for regional impact (and no such determination has previously been made by another municipal planning board, he or she shall notify the local governing body. The building inspector or municipal officer charged with or responsible for the enforcement of building codes) and so advises the permit applicant, the applicant shall (also) notify, by certified mail, the (regional) county planning board and the (affected) governing bodies of any adjoining municipalities within 200 feet of the property, who shall be provided 30 days to submit comment to the (local governing body and the building inspector) municipal zoning enforcement officer prior to the issuance of the zoning approval that is prerequisite to the issuance of the building permit.)

a. The cost of notification shall be borne by the applicant, who shall provide proof to the municipal zoning enforcement officer that all required notices have been given in the manner prescribed.

b. The (building inspector or municipal officer charged with or responsible for the enforcement of building codes) municipal zoning enforcement officer shall provide notice of the application for the zoning approval that is prerequisite to the issuance of a building permit (to the municipal governing body).

This act shall take effect immediately.